

Next round of HFSS restrictions land

Are you ready?

The focus on HFSS

In July 2020 the Government launched its [tackling obesity strategy](#). In the strategy, the Government announced a number of measures to help people live healthier lives. These included consulting on front of pack labelling, requiring large out of home food businesses to add calorie labels to the food they sell, consulting on introducing calorie labelling on alcohol, and legislating to end the promotion of products deemed high in fat, sugar and/or salt (HFSS) by restricting volume promotions and placement in certain locations. In addition to these measures, the Government announced its intention to ban HFSS products being shown on TV before 9pm and paid-for adverts online.

What is HFSS?

Food products are classified as HFSS products if they score four or more points on the Department of Health's Nutrient Profiling Model, while drinks are considered HFSS products if they score more than one point. Guidance on applying the Nutrient Profiling Model and worked examples can be found [here](#).

WHAT IS HAPPENING ON 1 OCTOBER 2022?

KEY DATE AND LEGISLATION

Previously delayed, [The Food \(Promotion and Placement\) \(England\) Regulations 2021](#) (HFSS Regulations) are due to be implemented on 1 October 2022.

WHAT IS HAPPENING?

Businesses (with 50 employees or more) that sell pre-packaged HFSS products to consumers in England, either in-store or online will be affected by the HFSS Regulations.

Schools (educating those up to the age of 18) and care homes are exempt and the HFSS Regulations will not apply to the 'out of home' sector or to manufacturers of HFSS products, unless they sell direct to consumers.

Placement restrictions in store

Stores will be prohibited from placing HFSS products at the following locations:

- within 2m of a checkout facility (unless placed in, but not at the end of, an aisle)
- within 2m of a designated queuing area (unless placed in, but not at the end of, an aisle)
- at the end of an aisle where the aisle end is next to a route through the store
- on a separate structure (for example, an island bin or free-standing unit) which is connected to or next to an aisle end
- at any store entrances
- in a covered external area (ie a foyer).

The restrictions will not apply to stores with a floor area of less than 185.8m² (ie certain convenience stores) or stores that sell only a single HFSS category of food (for example, a sweet shop).

Placement restrictions in online stores/marketplaces

Online stores will be prohibited from offering HFSS products for sale on certain webpages including:

- home pages and landing pages
- pages not intentionally opened by the consumer (for example, pop-up pages)
- "favourite products" pages unless the consumer has previously purchased the specified product or intentionally identified it as a favourite product
- checkout pages.

PREPARATION FOR BUSINESSES

Businesses should identify which products will be affected and assess the impact of the product placement restrictions on sales.

Businesses could also consider:

- re-formulating recipes to produce reduced fat, salt and sugar variants of existing products
- developing recipe formulations for future products so that they are not identified as HFSS.

Guidance on how specific products will be categorised is set out in the Government's 6 April 2022 [clarification guidance](#).

The Government's guidance, published [here](#), provides further details of the location promotion restrictions, including examples, guidance, formulas for prohibited distances and [diagrams](#) of location restrictions.

April 2022: calorie labelling

On 6 April 2022, the [Calorie Labelling \(Out of Home Sector\) \(England\) Regulations 2021](#) came into force.

Businesses with more than 250 employees operating in the 'out of home' sector must display the per portion calorie content of food and drink products at the point when the consumer chooses what purchase to make (for example, on restaurant menus). The following statement must also be shown: "adults need around 2,000 kcal a day".

The 'out of home sector' includes any outlet where food or drink is prepared for immediate consumption. Typical examples include restaurants, cafes and takeaways but supermarkets that serve 'grab and go' food and drink will also be in scope. Where food or drinks are sold online or via an app, the information must be provided at the point of both order and delivery.

Judicial review

Before the delay to certain HFSS restrictions was announced, Kellogg's launched judicial review proceedings against the Government in relation to the Nutrient Profiling Model (used to determine the products that fall within scope of the upcoming HFSS regulations). However, the claim was dismissed by the Court and Kellogg's has indicated that it will not appeal the decision.

From October 2023...

... HFSS Regulations will restrict qualifying businesses from:

- offering HFSS products for sale as part of volume or multi-buy price promotions, such as 'buy one get one free' or '3 for 2' offers, both in-store and online; and
- offering free refill promotions of certain non-pre-packaged HFSS drinks in-store.

These rules were due to come into effect on 1 October 2022, but to the relief of much of the food and drink industry government ministers have delayed the changes for a year. The Government explained that the delay would allow it to "review and monitor the impact of the restrictions on the cost of living in light of an unprecedented global economic situation."

From January 2024...

... the [Health and Care Act 2022](#) will introduce a 9pm watershed for HFSS or 'less healthy' food and drink advertising on TV and a restriction on paid-for advertising online. The new rules were initially intended to come into force on 1 January 2023. However, the Government has announced that the new rules will be delayed for a year amid a growing recognition that the industry needs more time to prepare. For further information, have a look at RPC's article [here](#).

Watch this space...

... it has recently been reported that a review of England's anti-obesity strategy has been launched as part of a wider deregulation initiative which could lead to further delays to, or even a complete abandonment of, the upcoming restrictions.

If you'd like to discuss any of the above in further detail, please contact Ciara Cullen (ciara.cullen@rpc.co.uk | +44 (0)7747 033 165) or Sarah Mountain (Sarah.Mountain@rpc.co.uk | +44 (0)20 3060 6674) from RPC's food and drink group or your usual RPC contact.

